

UNITED STATES OF AMERICA BEFORE
THE NATIONAL LABOR RELATIONS BOARD

In the matter of

United Government Security Officers
of America International and its Local
217,

Respondents,

and

Albert Frazier, an individual,

Charging Party

Case No. 04-CB-202803

**POST-HEARING BRIEF ON BEHALF OF THE UNITED GOVERNMENT
SECURITY OFFICERS OF AMERICA AND ITS LOCAL 217**

Alan J. McDonald
Kristen A. Barnes
McDonald Lamond Canzoneri
352 Turnpike Road, Suite 210
Southborough, MA 01772-1756
508-485-6600
amcdonald@masslaborlawyers.com
kbarnes@masslaborlawyers.com

TABLE OF CONTENTS

	<u>Page</u>
Table of Authorities	i
I. Introduction	1
II. Factual Background	2
III. Argument	34
1. The Evidence Presented At Hearing Shows That UGSOA Lawfully Reorganized Local 217 In April of 2017 For Legitimate, Non-Discriminatory, Purposes And Did Not Refuse To Represent PSOs in Either Local 217 Or Local 217B.	35
2. UGSOA Lawfully Disclaimed Interest In Local 217B, Made Up Of The Frequently Subcontracted Sites, For Legitimate, Non-Discriminatory Purposes.	43
3. Even If, <i>Arguendo</i> , The Separation Of Local 217B Constituted A Disclaimer Of The Local 217B Sites, UGSOA Did Not Violate The Act.	51
IV. Conclusion	58

TABLE OF AUTHORITIES

<u>Cases</u>	<u>Page</u>
American Sunroof, 243 N.L.R.B. 1128 (1979)	48
Bake-Line Products, Inc., 329 N.L.R.B. 247 (1999)	48; 50
Bonita Ribbon Mills, 88 N.L.R.B. 241 (1950)	49
Dycus v. N.L.R.B., 615 F.2d 820 (9 th Cir. 1980)	44; 51; 52; 53; 54
Federal Shipbuilding & Drydock Co., 77 N.L.R.B. 463 (1948)	49
Grinnell Fire Protection Systems Company, Inc., 235 N.L.R.B. 1168 (1978)	51; 54
Lanier Brugh Corp. 339 N.L.R.B. 131 (2003)	45; 46; 47
Manitowac Shipping, 191 N.L.R.B. 786 (1971)	46; 55
Mastec Advanced Technologies, 357 N.L.R.B. 103 (2011)	49
NLRB v. Circle A&W Products, 647 F.2d 924 (9 th Cir. 1980)	48
Riverfront Distributing, Inc., 1995 WL 1918089 (ALJ Decision 1995)	48
SEIU Local 250, 30 NLRB Advice Mem. Rep. 40028 (Advice Memorandum 2002)	54
Skibeck PLC, Inc., 345 N.L.R.B. 754 (2005)	45; 46
Southern California Printing Specialties District Council 2, 1983 WL 29348 (Advice Memorandum 1983)	55
Steinmetz Electrical, 234 N.L.R.B. 633 (1978)	56

I. INTRODUCTION

United Government Security Officers of America International Union (“International”) and United Government Security Officers of America, Local 217 (“Local 217”) (collectively, “Respondents,” “UGSOA,” or the “Union”) and Allied Universal (“Allied” or “Employer”) were parties to an April 1, 2014 to April 30, 2017 collective bargaining agreement (Joint Exhibit 1) covering a bargaining unit of protective security officers (“PSOs”) employed at approximately thirty buildings or “sites” throughout the Philadelphia metropolitan area pursuant to a contract with the Federal Protective Service (“FPS”).¹ On or about November 29, 2017, Region 4 of the National Labor Relations Board (“NLRB”) issued a complaint alleging that since about April 26, 2017, Respondents “disaffiliated” and refused to represent a portion of the bargaining unit because employees in that portion of the unit engaged in activities in opposition to Respondents’ leadership in violation of Section 8(b)(1)(A) of the National Labor Relations Act (“NLRA” or “the Act”).

A hearing was held before Administrative Law Judge Michael A. Rosas, Esq. on December 3, 2018. The relevant facts, as adduced on the record, demonstrate that neither the International nor the Local engaged in any violations of the Law as alleged.

¹ C&D Security initially held the contract with FPS and was the employer of the PSOs. Subsequently, Allied Barton, which later changed its name to Allied Universal (“Allied” or “Employer”) purchased C&D Security.

II. FACTUAL BACKGROUND

Prior to April 2017, Respondents represented approximately 220 PSOs within the Local 217 bargaining unit.² Those PSOs worked at about 30 buildings in the metropolitan Philadelphia area, including the Veteran Affairs Office (“VA site”) at 5000 Wissahickon Avenue; the Social Security Administration Office (“SSA site”) at 701 E Cheltenham Avenue; and the Internal Revenue Service’s Office (“IRS site”) at 2970 Market Street. (Natale, 103).³ Beginning in late 2015, James Natale, East Coast Regional Director for the International, began assisting Local 217 with contract negotiations and grievance handling. (Natale, 103). At times material, Michael Coston was

² On September 28, 2010, the NLRB certified UGSOA as the bargaining representative of “all full time and regular part time security officers, corporals and sergeants employed by the Employer at its GSA sites in Philadelphia, Montgomery, Delaware, Bucks and Chester Counties, Pennsylvania, excluding all other employees, office clerical employees, lieutenants, captains and supervisors as defined in the Act.” (Joint Exhibit 6). Notably, the recognition clause of the parties’ collective bargaining agreement (Joint Exhibit 1) modified the scope of the unit:

The Employer hereby recognizes the Union as the exclusive bargaining representative with respect to rates of pay, hours of work, and other conditions of employment for all security officers, employed by the Employer at the FPS sites in Philadelphia and surrounding counties, but excluding all other employees, including office clericals, sergeants, lieutenants, captains and any other supervisors as defined by the National Labor Relations Act. The above locations are hereinafter referred to as “site.”

³ Citations to the hearing transcript shall be designated by witness’ last name and page number throughout.

President of Local 217 while Berle Taylor served as Local 217's Vice President. (Markert, 23-24).

Health and Welfare

PSOs within the Local 217 bargaining unit received certain benefits through a health and welfare plan sponsored by the International. The International utilized BSI, a third-party administrator, to manage the plan including the receipt of contributions and the handling of benefits. Through BSI, the International had an agreement with Boon Group to provide health insurance while Pentegra ran the plan's 401(k) retirement plan. (Natale, 106). As of 2017, unit members received from the Employer a \$4.20 per hour health and welfare contribution for every hour worked. If a PSO required health insurance coverage, the cost of premiums were deducted from the health and welfare contribution and the remainder of the money was credited to the PSO's 401(k) account. (Markert, 20).⁴

The Employers holding the security contract with FPS have, from time to time, contracted out security services at the VA and SSA sites to subcontractors. In about 2012, C&D Security subcontracted with Trident Security and then Butler Security. Thereafter, Allied resumed employing PSOs directly. Allied then subcontracted PSO services to Greenlee Security for about a year before again employing the impacted PSOs directly. (Markert, 19). The

⁴ Andrea Markert, previously called Andrea Lewis Cross, has been employed as a PSO since 2011. From about May 2011 to May 2012, Markert worked as a sergeant and lieutenant outside the bargaining unit. Initially, Markert worked at the IRS site and was reassigned to the VA site. (Markert, 15-17).

number of subcontractors made it difficult to track health and welfare contributions. (Frazier, 62-63).⁵

Andrea Markert testified that while working for Trident Security, PSOs had issues receiving uniforms, 401(k) contributions, and health care benefits. (Markert, 21-22). Markert testified that she lost \$5,600 because she was charged for health insurance although she had submitted a waiver. (Markert, 22). Markert filed multiple grievances, made phone calls to and emailed the International and the Local, and contacted BSI, Boon Group, Aetna, and Pentegra. (Markert, 22). Markert regularly attended union meetings and raised issues regarding health and welfare benefits at those meetings. (Markert, 30). Additionally, Markert volunteered to be on the Local 217 negotiating team where her participation was welcomed. (Markert, 36-37).

Albert Frazier, shop steward for the VA and SSA sites, raised concerns related to health and welfare benefits and 401(k) contributions to the Local. (Frazier, 55). PSOs had reported that they had unpaid medical bills to Frazier and that money was not being allotted to their 401(k) accounts. (Frazier, 56). Frazier recalled raising those issues with Taylor and Coston through phone calls, text messages, and by email. (Frazier, 56). Rashid Goins,⁶ Frazier, and

⁵ Albert Frazier has been employed as a PSO for 13 years. He has been assigned to the VA site since 2013. Frazier became a shop steward in 2015. He testified that Coston and Taylor dropped him as a steward after a week. The International then reassigned him as shop steward. (Frazier, 52-54).

⁶ Goins has been employed as a PSO since 2011. He worked at the IRS site from 2011 to 2015 and was then assigned to the VA site. Goins indicated that he acted as a shop steward because one was not available at his sites.

Markert also brought those issues to Natale and Desiree Sullivan, President of the International, when the Local could not resolve them. (Frazier, 57).

Goins testified that in 2016 and 2017 he submitted unpaid medical bills for two PSOs to UGSOA and BSI. Beau Darling, a third party administrator, told Goins that the bills were being paid. Goins provided Darling with no evidence showing that the bills were not paid. (Goins, 90-91).

On August 3, 2016, Jeff Miller, the International's CSO Vice President, emailed Jillian Nichols, Operations and Account Manager for BSI, writing, in part,

I received a call today from a Rashid Goins as a representative of members from UGSOA Local 217 out of Philadelphia.

He was calling reference the status of Health Care Coverage for Members Alshe Woods and Tanya McFarland, as both report BSI is holding Health and Welfare Funds and they appear to not have current insurance.

(Joint Exhibit 26). Nichols responded on August 4, 2016 writing,

Both members below were effective under the plan 1/1/16. The carrier does not have any calls on file for either member. Please ensure that when they are being told they have no coverage, that they are using the number on the back of the card to verify.

(Joint Exhibit 26). Miller passed that information on to Goins. (Joint Exhibit 26). On August 9, 2016, Goins emailed Natale and Miller writing, in part,

Listen, I will say this one more time.

(Goins, 79-80, 86). Markert identified Frazier and Goins as the shop stewards appointed to her site. (Markert, 23-24).

1. We all have paystubs where it shows funds being redistributed to our health and welfare. You don't need proof from me, you already have it.
2. These monies are supposed to be reapplied to our Pentegra or Boon group accounts, or both. Pentegra and Boon group have both reported no monies received from BSI since Nov. 2015. As of this date there is approximately 5000.00-6000.00 per officer from Nov. until now that is still unaccounted for by BSI.
3. I will take your advice and file a complaint with the DOL. I will also have PSO Frazier contact the Commander of FPS to notify him of this ongoing matter. Let BSI know this is there final chance to resolve this before it goes legal.

(Joint Exhibit 28). Miller forwarded Goins' August 9, 2016 email to Nichols and Darling. Nichols emailed Steve Lavalley, BSI administrator, writing, in part,

I would assume with the names on the email below, Albert Frazier and Andrea Lewis, they are referencing the previous Greenlee contract. Local 217 has been updated all the way through the end of July. Greenlee, however, is separate. We had to go back and audit all months that they ever sent us. I have to go to Pentegra and get all funds redistributed from what was already uploaded (based on their -Greenlee's- previous incorrect reports). This costs \$150 per hour and isn't an overnight situation, so before I send the completed audit to them, I want to make sure it's correct. We had to get a credit from the Boon accounts to apply back over to Pentegra as well. So, I will reach out to Pentegra and get an estimated time frame on when they anticipate the funds being able to be transferred.

. . . . Members under the previous Greenlee contract, however, are missing hours. Greenlee submitted hours to us through pay date 4.22.16, I have seen nothing from them since then (remaining contract hours and funds). Per my email documentation regarding the transfer of this contract, Allied Barton was to pick these members up on 5/13/16. I am not showing Allied Barton picking them up on hours

reports until the end of June. I have sent an email to Allied Barton to figure this out and get a direct answer on what the reports they sent me cover and where I can retrieve the missing hours and funds.

This is the most recent update I have regarding this contract. I have audited all months from the beginning, Sept – April. I have sent all corrected hours to Boon and updated all benefits (for members enrolled). 401k was audited and is being completed to upload from January – April.

(Joint Exhibit 28). On August 22, 2016, Frazier emailed Lavalley, writing, in part,

It has been two weeks. We have not received any update regarding this costly matter.

PSOs are still hearing conflicting information from BSI, Boon/Aetna, Pentegra.

A few PSOs have recently received offensively miniscule contributions into their Pentegra account's without any explanation.

(Joint Exhibit 27). On August 25, 2016, Markert sent a further email, stating, in part,

Have we received any response to the below email(s) regarding our health and welfare case?

The lack of communication and blatant disregard from UGSOA and its legal representative(s) concerning our missing >100,000, and growing, is beyond disheartening and down right criminal.

(Joint Exhibit 27). Nichols responded to Frazier and Markert, at length, writing, in relevant part,

I was just made aware of the email trail and am unsure of who specifically this email is directed at, but since we have been a clear supporter of all UGSOA members (especially your situation in particular Ms.

Lewis-Cross) I will jump in here. I know you are well aware of what we have done to ensure everything is done correctly and to the benefit of UGSOA members. We are all well aware of the unfortunate situation that Greenlee has put their former employees under. . . .

[W]hen Greenlee stopped sending the reports and funds, UGSOA and BSI got on a call with Greenlee forcing their hand to action of sending us the missing/required hours reports and funds from January – April. . . .

As far as the comment.... ‘A few PSOs have recently received offensively miniscule contributions into their Pentegra account’s without any explanation’, I want to explain this as well. The very last hours BSI has received from Greenlee was for the payroll ending 4/22/16. All members under the Greenlee contract then came on the C&D hours report for June with a small number of hours. I reached out to C&D to verify the reasoning and their response was that they did not pick up the contract until 6/13/16. So, we are still missing hours and funds from 4/22/16-6/13/16. We have reached out to all avenues to retrieve these hours and funds. We have not received a response or decision on the action that will be taken on retrieving these funds.

BSI is willing to submit all individual audits to all members affected by this outlandish and gross situation you have endured. I know that the above response is not a 100% resolution, but please rest assured that we will take whatever action necessary (along with UGSOA) to retrieve the missing information.

(Joint Exhibit 27). On October 21, 2016, Markert emailed Nichols, including multiple other recipients seeking an update related a health insurance question. On October 24, 2016, Nichols replied, writing in part,

Please keep in mind that we have been working and fighting for your reimbursement for quite some time now, so the element of surprise regarding this situation is not the case. Please know that I cannot

give out an exact date as to when I will give you an answer because once again, we are at the mercy of someone else on getting the exact amount.

. . . . However, we recently received the amount back from all of 2015. I can upload this amount this week, but keep in mind this is not the full amount owed back to you. We are still awaiting the remaining amount.

I appreciate your diligence on all the follow up. As always when we get a finalized response, we will be in touch with everyone.

(Joint Exhibit 29). Markert responded, writing, in part,

Okay so another story another delay.

. . . Here's what I'll do since BSI can not efficiently conduct timely business with their subcontractors and/or produce reliable audit(s)

I will pull the 8 paystubs proving my actual hours worked between August through December and do the simple math for you.

This is not a complicated process, certainly nothing that justifies 4 months!

. . . I would love to see at least 1 costly mistake involving BSI resolved within a reasonable time frame. It's called accountability. Thousands of dollars over the last year missing and it's never BSI's error or within their capabilities to fix! Unacceptable.

(Joint Exhibit 29). Nichols replied, writing, in part,

Your continued allegations and accusations are hindering our productivity in reaching our end goal which is to get all your funds to your 401k account that we (BSI) fought for. Please respect the fact that we are absolutely doing what we can to get your fund back to your 401k. I appreciate the fact that you want to send us paystubs, but as explained below, this is not a simply mathematical calculation (as indicated).

We are talking about almost 24 months' worth of H&W and funds.

We will not continue to go back and forth with demeaning emails. I will respond when we have a finalized number back from the carrier.

(Joint Exhibit 29).

Initially, the International attempted to resolve health and welfare issues caused by Greenlee's failure to make required health and welfare contributions directly with Greenlee but Greenlee would not cooperate in recovering the funds. The International then contacted Allied who recovered the funds which were then applied to employees' accounts. Thereafter, a process was used to determine what the earnings or losses would have been on the accounts had the payments been timely applied. Greenlee was notified of additional interest payments due as a result of those calculations. By July or August of 2017, Greenlee had made its final interest payment and all of the health and welfare accounts had been reconciled. (Natale, 117).⁷

2017 Local 217 Election

Markert, Frazier, Goins, and Carl Alberg were nominated to run for office within Local 217 as a part of a Spring of 2017 election.⁸ (Markert, 26). Coston, Jonathan Mears, Shawn Watts, and Andrew Richards were also nominated to

⁷ Even though disclaiming interest in Local 217B, the International always intended to finalize resolution of the health and welfare contribution issue. (Natale, 116)

⁸ Markert testified that since "we were able to fix things at our site by ourselves, we thought we would be, we'd be a good fit to try to make things better for everybody." (Markert, 27).

run for office. (Markert, 27). Ultimately, approximately 25 PSOs, including Markert, Frazier, and Goins as well as some PSOs who were not assigned to the VA, SSA, or IRS sites, were not permitted to run for office or vote in the election because they were not members in good standing of Local 217 due to their failure to pay dues. (Natale, 119-120, 127, 133). Local 217's bylaws at Article X, Elections, provide, in relevant part,

Section 2

To be eligible for the election to office, a member must have been in continuous good standing for a period of not less than one year at the time of the election. Good standing for the purpose of election to office shall mean payment of all initiation fees, dues, fines and assessments required. Good standing shall also mean compliance with all provisions of these By-Laws and one will not be in good standing who has been found guilty by a trial board within the last year of a violation of any provision of these By-Laws or obligation of membership. (Waive Section 2 for new Local).

Section 7

All those in good standing on the first day of the month of the election shall be eligible to vote.

(Joint Exhibit 10). Notations appear on PSOs' biweekly paychecks showing the amount of dues deducted. (Markert, 39; Frazier, 67).

Frazier testified that Coston notified him two days prior to the election that his dues were in arrears and he could not run for a union office. (Frazier, 58). Similarly, Coston called Goins prior to the election and told him that he was not eligible to run for office because he was not a member in good

standing. (Goins, 82-83; see Joint Exhibit 49).⁹ Markert testified that four days prior to the election she received a text message from Coston indicating that she was not a member in good standing because she had not paid dues for 10 months. (Markert, 28; see Joint Exhibit 51). According to Markert, she obtained a copy of her payroll. Markert also contacted Captain Stanley Cramarti who found a signed authorization card in her personnel file. (Markert, 28). Markert testified that a security guard greeted her when she arrived at the election and told her that she could not vote like others who were not in good standing. (Markert, 29-30). Markert texted Coston requesting to file a grievance over the election. (Markert, 30).

On April 1, 2017, Goins filed a complaint with the Department of Labor (“DOL”) to contest the election. (Goins, 82-83). According to Goins, DOL recommended that the election be conducted again. (Goins, 84-85). On April 19, 2017, Goins emailed Coston and Taylor, copying Sullivan, demanding that certain allegations be addressed by the Local and noting that a formal complaint had been filed with DOL, writing, in part,

Allegations:

- The unfair process of the Union election by making certain candidates ineligible and were also forbidden by hired armed security to attend the election which was a direct violation of our CBA 3.2 and the International Constitution bylaws Article 6.8 and Article 13.1 c & d

⁹ Goins contacted the International by email. The International responded to Goins’ questions about the good standing requirement. (Joint Exhibits 49, 50, and 57).

- An itemized detailed expenditure report for 2013-2017, which still has not been received.
- Refusal to extend the deadline of the new CBA to allow adequate time for proper negotiations.
- Failure to explain or respond to accusations of unauthorized spending of Local funds.
- A Forensic Audit was unanimously voted in by the Local 217 at the Jan. 14th Union meeting, but (America Choice Accounts) was never selected.
- We never received confirmation of the retention of Attorney Mark Risenfield who was voted in by the Local to assist with the completion of the new CBA.

(Joint Exhibit 33). Natale was not aware of any complaints filed with the DOL prior to the disaffiliation vote. The DOL complaint was made against Local 217 only and Local 217 handled the DOL complaint using its own attorney.

(Natale, 120, 126). As a result of its investigation, DOL found issue with Local 217's failure to maintain the secrecy of ballots. The DOL, however, did not express any concerns regarding the disqualification of unit members who had failed to pay dues. (Natale, 121).

Eventually, Frazier worked out a payment plan for his dues with Natale and Sullivan. (Frazier, 69-70; see Joint Exhibit 41). Markert also set up an arrangement with Loretta Dunigan, the Employer's project manager, to resolve the issue with her dues. Markert acknowledged that she had not paid her dues at the time of the election. (Markert, 50). In May 2017, Goins similarly set up an arrangement to pay his back dues. (Joint Exhibit 42).

Local 217B

Natale recalled receiving emails from Markert, Goins, and Frazier in addition to other individuals at the SSA, IRS, and VA sites in March and April of 2017. (Natale, 129). Natale testified that based on communications with various members, it was clear that the relationship was shattered. Natale felt that the union's resolution of issues was never to the satisfaction of the members. (Natale, 119-120). Despite the International's successful efforts to restore health and welfare funds, employees continued to make accusations that additional funds were missing. However, they provided no documentation showing that any funds were missing. (Natale, 119).

On March 31, 2017, Goins emailed Sullivan, Coston, Taylor, Natale and Miller writing,

There is still about 150k in unaccounted funds deducted from PSO's since 2012, between the VA & the SSA.

(Joint Exhibit 54). On March 31, 2017, Sullivan replied to Goins, writing, in part,

UGSOA doesn't keep members hostage. If you're unhappy with us or Local 217, we can disaffiliate with your site and free you up to go with Steve Maritas' union.

(Joint Exhibit 30). Goins replied, "We may be able to consider your offer once we receive the H&W and 401k monies missing from each PSO[.]" (Joint Exhibit 30). Goins later added, "And let's not forget the thousands in unpaid medical expenses. Thousands!" (Joint Exhibit 30). Sullivan asked Darling to check on

Goins' claims of missing money (Joint Exhibit 30) and asked BSI to respond to Goins. (Joint Exhibit 54).

On April 4, 2017, Nichols replied writing, in part,

We see that you are alleging there is still a very large sum of money (\$150k per your statement) still unaccounted for. We agree that your small portion of Local 217 contract has been moving back and forth between sub-contractors (Trident, Butler and Greenlee) since inception of the Local. We can also agree that none of the sub-contractors were ever constant in hours or funds submittal for the benefit of you or any of your fellow members. And, we will also agree that there are still some hours and funds that are unaccounted for when you all were employed with Greenlee Security. However, we cannot agree that the amount owed is anywhere near \$150k.

BSI & UGSOA have always done what we could to ensure you were paid your correct earned H&W funds. And, because of that, this specific account was audited multiple times. Greenlee did finally pay out a portion of what was owed in December of 2016 when you were given a large upload into your 401k account of over \$4k. However, we are still attempting to collect the funds that are unaccounted for hours worked between May & June 2016, prior to C&D/Allied/Universal taking your contract back over. (Please see the final audit notes and amount shown below). As you will see, the TOTAL amount still owed from Greenlee for benefits & 401k is a little over \$23k. This is nowhere near the alleged amount on your behalf of \$150k.

. . . In response to your allegation, we will require documentation of the alleged amount of \$150k unaccounted for. However, as far as the Greenlee situation is concerned, BSI and UGSOA have been working hand in hand to retrieve these funds for the members affected. Please understand that this situation has not been taken lightly by any means and we have every right to believe Greenlee will be submitting the funds we have shown them are still owed. We don't have an anticipated time frame

around retrieving these funds, but we feel positive we will be getting them.

Please take time to read through the information provided and if you feel your original allegation is justified, please submit the supporting documentation and we will research.

(Joint Exhibit 54).

On cross-examination, Markert acknowledged that Allied, Nichols, and Natale were trying to determine whether money was missing and the amount of money missing. (Markert, 44-45). Markert further admitted that Nichols had told her that all missing funds were accounted for. Markert could not recall whether she provided anything to Nichols demonstrating that she had not been paid. (Markert, 46-47).

Frazier testified that nothing happened to resolve issues with health insurance or the 401(k) accounts and that they became a “problem” for the Local and International. (Frazier, 58). During cross-examination, Frazier acknowledged that issues had, in fact, been solved and Frazier worked with third party administrators to resolve the remaining problems. (Frazier, 64). Frazier never submitted any paperwork regarding uncovered medical bills and made no efforts to obtain reimbursement. (Frazier, 65).¹⁰ Frazier admitted that he continued to complain to BSI that funds were missing after BSI indicated that it believed all of the funds were located. Frazier never submitted

¹⁰ Frazier testified that Taylor filed a charge with the NLRB. The NLRB instructed Taylor to drop the charge. Frazier said that he would not until money came into their accounts. (Frazier, 66).

any documentation to BSI or the International regarding those alleged missing funds. (Frazier, 66-67).

In April 2017, Natale exchanged emails with Goins and Frazier related to the dues issue. On April 5, 2017, Frazier emailed Natale writing,

My name is Albert Frazier Im with the local 217 in Philadelphia,Pa Veteran Affairs (VA) site. As you know 10-11 months of union dues hasn't been paid for the majority of the P.S.O's that work at this site and the SSA,no fault of our own. We all did our due diligence July 22, 2016 by signing the union cards and handing them to the local president which was Mike Coston at that time. We all know that we have to catch up on our union dues in which we have know problem making arrangements to do so. My question to you... where is the representation for the members thats delinquent? Why wasn't there a grievance put in from the International or the local to address the company on this situation? And why are we at fault 100% for someone's incompetence/neglect? Like i stated at the begining of this email, we have know problem paying back union dues but it will be paid back in installment!

(Joint Exhibit 31). On April 6, 2017, Frazier wrote again demanding in part, that "local 217 and the International UGSOA take responsibility[.]" (Joint Exhibit 31). Natale sent a reply on April 6, 2017 writing, in part,

Silence is an indication that we are busy assisting other members and will respond to you as time permits. I am tired of repeating myself and talking in circles with your "crew" who are looking to do nothing but cause trouble and taking away valuable resources from those that have been wronged or seeking to help and assist others in a unified goal. I do not intent to debate these topics further after this.

Dues: Dues are both a condition of membership and Employment on this contract. It is each employee's responsibility to ensure that the payments are made timely, just like a cell phone or cable bill. Nothing

absolves your obligation to pay what is past due. Our Unions goal, like many others, is to assist workers in their relationship with the Employer to ensure they are treated fairly and equally. We are not in the business of looking to have employees terminated, hence why we are willing to set up a payment plan for any owed back dues. If that is still desired by any member in bad standing than they will need to set that up ASAP.

Election: Members in bad standing are not eligible to run for office until in good standing for a minimum of a year per your by-laws. . . . Members in bad standing are also not eligible to vote in the election. Would dues have been paid up prior to the vote, those members would then have been allowed to participate. . . .

Health & Welfare: As BSI has stated, we have been working with the Company to finalize the remaining owed funds that were failed to be paid out during the transition last summer. Should this process continue to be dragged out by the Company, I will look to the DoL once again to finalize the payment of remaining funds to ensure that all members are made whole.

(Employer Exhibit 31). On April 13, 2017, Markert emailed Natale regarding dues writing, in part,

Although to no fault of our own we are left scrambling to make amends and find resolution. Despite having current Authorization Card (7/22/2016) filed in our personal files, new authoization cards were filled out by all 16 members within days.

As a group, or “crew” as referred to by our Regional Director, all 16 Authorization Cards were collected and attempted to be hand delivered directly to the newly elected Local 217 President, Shawn Watts. He refused to take them as done in past practices by our Local 217 presidents.

(Joint Exhibit 32). On April 27, 2017, Goins emailed Natale advising that certain officers would pay \$23.68 per pay period toward back dues. Natale

advised Goins that payments should be sent by check or money order to the International. (Joint Exhibit 34). Goins responded, writing,

Absolutely not! We don't do paper checks and we all agree it would be a grave inconvenience to have to purchase a money order, an envelope and stamp and mail payment every week. Since the International, the Local and Allied Universal failed to have the original deductions set up, we the PSO's all agree the additional deduction previously discussed by the company is authorized.

(Joint Exhibit 34). Natale and Goins continued to exchange emails with Goins writing on May 1, 2017,

Jim, there will be no mailing of any checks. We will not be over burden to repay dues, due to your failure to adequately make sure these funds were set up for proper deduction back in June 2016. Im really fed up with UGSOA not being accountable and passing the buck with issues promised in writing you would be responsible for I.E. the CBA and the Constitutional Bylaws. And your continued failure to uphold your promise. The DOL has been made fully aware of this unacceptable non-sense.

Meanwhile, the International is not willing to reimburse us for postal charges so mailing is out of the question. I will speak with the "CREW" to see who would be willing to do a possible ach direct debit, if the UGSOA is set up to do that. I will let you know what the "CREW" is willing to do...

(Joint Exhibit 34). On May 1, 2017, Frazier also emailed Natale, writing, in part,

There were four entities that played a major roll in this mismanagement of union dues: Allied Universal, Local 217, International UGSOA, and the P.S.O's... The only ones that took responsibility in this whole debacle was the P.S.O's...

I'll wrap this email up with this: union members that's in arrears with back dues no fault of our own will be paid under agreed upon terms, as a matter of fact it'll be wise to remember that UGSOA works for Me and its Members its not the other way around!

We the "crew" as you like to refer to us as at V.A and SSA see that the bottom line is Money... My question to you is where's the money that was due to the "crew" from Greenlee Security that Mike Coston told me about???

(Union Exhibit 35). On May 1, 2017, Natale replied, writing, in part,

It has become apparent throughout our communications over the last few weeks that there is a disconnect between some of the membership of Local 217 and that of UGSOA International. We understand that you are unhappy and have lost interest in maintaining your membership in UGSOA. We are never ones to hold members hostage if they are dissatisfied with our services, so we have decided to assist you in beginning the disaffiliation process. Ballots will be mailed to each officer working at the [VA, SSA, and IRS sites]. . . .

Also, to update you on the Greenlee H&W issue, BSI had a conference call with Greenlee this morning. BSI is now in possession of half of the missing funds and the remainder will be forwarded to them with updated hours reports this week. Once all funds are received they will be processed in each individual officer's accounts. An additional deposit should be expected in each officer's account once calculations have been made for any lost gains because of the delay on the Company's part in furnishing the funds in a timely manner.

(Joint Exhibit 34). On May 1, 2017, Goins responded, writing in part,

[T]here is still unfinished business that the UGSOA has not resolved. We are willing to consider disaffiliation, but there are a few demands. 1. We need all funds owed to all PSO's from BSI and Boone Group to all PSO's on the contract. All H&W for all PSO's with a 401K and a Health Care account through the

union brought current and up to date with all medical bills paid in accordance to the coverage agreement. . . .

4. Any other PSO who wishes to disaffiliate with the UGSOA will be freely allowed to disengage from the International UGSOA with no retaliation of any sort at all. If the UGSOA agrees to these demands and are willing to put these demands in writing with a signature of agreement from all appropriate parties of the UGSOA, we will gladly disaffiliate.

(Joint Exhibit 34). Natale also received a response from PSO Jay Pharrell writing, in part,

If you want to offer the chance to disaffected from UGSOA the WHOLE LOCAL 217 would like to take you up on that offer after a few ongoing issues and problems are addressed and resolved first. Once all issues and problems are done we the BODY of the local UNION have no problem look at and maybe starting the disaffected process. Until that time we still have unfinished business that need to be cleaned up.

(Joint Exhibit 39).

On May 1, 2017, Drake Masters, Local 217 Business Agent, circulated a newsletter reminding PSOs to check their paystubs to confirm dues deduction.

(Joint Exhibit 37). On May 2, 2017, Markert responded to the newsletter by email writing, in part,

Having said that... some of the officers have been through 6 transitions in the last 3 years. Receiving paychecks timely during each transition was struggle enough, seeing there was a time when some of us went 5 weeks without a paycheck (June 2014). Which no one seemed to find issue. . . . We battled through doing what we needed to do through each failed transition & reacquisition time & time again by following ONLY the rules & regulations set forth to the bylaws and CBA. There was no assistance, guidance or support from the Local.

(Joint Exhibit 38). On May 3, 2017, Natale again responded, explaining the status of the resolution of the health and welfare contribution issue, writing, in part,

This process is rarely swift, especially once government agencies are involved as evidenced by the most recent Greenlee Health & Welfare (H&W) issues. It is only now, nearly one year from when Greenlee was kicked from the contract, that we are coming to a final resolution on these funds. As stated in a previous email, BSI is now in possession of more than one half of the missing \$23k that Greenlee owed on H&W and they are expected to receive the remainder by the end of this week. Once the funds are applied to each member's 401k accounts, calculations will be made in accordance with DoL guidelines to compensate for lost gains because of Greenlee's failure to produce these funds in a timely manner. Once these calculations are completed, Greenlee will remit payment for said amount and their obligations will have been fulfilled.

(Joint Exhibit 38). With respect to the dues deduction issue, Natale clarified that it "was not just a Greenlee/VA issue" and the issue occurred at other buildings as well. (Joint Exhibit 38). On May 3, 2017, PSO Martin Gedeus further replied, stating, in part,

James, It seems like you have forgotten we are the ones paying you to serve us as our union representative. You are failing to acknowledge that We are the boss and you are the worker so enough with these silly threats about getting officers removed from the contract. . . . It just goes to show that you have no interest in fighting for officer's rights because the first thing you should have done is go after the company and find out why they failed to do their job, but instead you're blaming the officers for the local's and company's negligence. . . . You need to take that elitist and thuggish mentality of yours some where else

because it's not working over here. The officers are not beneath you. . . .

(Joint Exhibit 38). On May 3, 2017, Pharrell responded to Natale, writing, in part,

While I along with other applaud UGSOA International for finally doing something after 4+ years of us (The Local) paying dues it's a little to late. The whole email you stated that the Company took responsibility for the dues not getting deducted, And no fault of their own (The PSO'S). But yet your still punishing the PSO'S by not allowing them to Participate in ongoing union affairs.

(Joint Exhibit 40). On May 3, 2017, Frazier further responded writing, in part,

I find it convenient and ironic that after I emailed James Natale on 5-1-2017 about lost funds owed to the V.A and S.S.A by Greenlee Security and declared a victory by the former V.P of local 217 on 2-23-2016 with the NLRB against the company of said missing funds is still alive and well to date, especially after charges were dropped by the former V.P with the NLRB we then get a response from James Natale a little over a year later about funds owed to the PSO's. . . .

We have officers that still to this day have medical bills that range from \$2500.00- \$35000.00 unpaid by Boone group who disguises themselves to be Aetna. We received little to no help from the local 217 nor the International UGSOA. James in your own words you stated "regardless of each change, we have ensured that each member is made whole when and if violations occur. WE'VE had multiple violation I just gave a few when will we be made whole Sir?

. . . . James your email was full of lies, deceit, indirect threats, and contradictions. i would like to take the time to thank you for exposing yourself yet again.

(Joint Exhibit 40).

Natale testified that in other instances, the International had successfully split locals into separate groups as a way to keep the peace between unit members. (Natale, 125). The International's Constitution and By-laws at Article VII provide, in part,

The International President shall:

- (t) Reorganize, dissolve, disaffiliate, consolidate, merge, amalgamate or separate existing Local Unions subject to a two-thirds majority vote of the Executive Board approving the same.

(Joint Exhibit 9).

The Executive Board voted by email to split the VA, IRS, and SSA sites from Local 217 and create a new local called Local 217B. On April 26, 2017, Natale emailed members of the Executive Board writing, in part,

I'm requesting we vote on separating the VA Office, (5000 Wissahickon Ave), the SSA Office, (701 East Chelton Ave.), and the IRS Office, (2970 Market Street), from the rest of Local 217. If affirmed they will be named 217B and I will start working with them to get them set up.

They have been growing increasingly frustrated with the rapid changes of employers over the last few years and the situation has gotten to the point that the two groups are not communicating well and they feel they would be better served operating on their own.

(Joint Exhibit 18). Sullivan; Jeff Miller, the CSO Vice President; Joe Carey, NRC Vice President; Eric McMillen, Senior Vice President; and Michael Burke, the West Coast Regional Director voted to separate the groups. (Joint Exhibit 18). PSOs did not vote on or request the split. (Markert, 32-33; Frazier, 59; Goins,

83; Natale, 109). Frazier testified that they told the Local and the International that they did not want to split. (Frazier, 59).

The International notified unit members of the separation between Local 217 and Local 217B on May 22, 2017 (Natale, 108)¹¹ when Natale sent a letter to PSOs stating, in part,

It has become apparent over the last several months that many of the Local 217 membership working at the Veteran Affairs (VA) Office (located at 5000 Wissahickon Ave. Philadelphia, PA 19144), the Social Security Administration (SSA) Office (located at 701 E Cheltenham Ave. Philadelphia, PA 19144) and the Internal Revenue Service's (IRS) Office (located at 2970 Market St. Philadelphia, PA 19104) have become increasingly dissatisfied with the services of Local 217 and the administration running it.

Because of this, UGSOA International Executive Board has taken a unanimous vote, in accordance to the International Constitution, Article VII, Section 2(t), to separate the three buildings named above from Local 217 and create a new Local 217B, effective immediately. **Further details on this transition will be forthcoming to those affected by this change, including the election of a board of officers, by-laws and CBA preparations.**

(Joint Exhibit 11) (emphasis added).

After the Executive Board voted on the separation, Natale discussed it and how it would work with the Employer. (Natale, 109). At that point in time, the parties were in negotiations for a successor to the 2014 to 2017 collective

¹¹ Notification was delayed because the Employer declined to identify the PSOs assigned to the affected sites. (Natale, 121).

bargaining agreement for Local 217.¹² On May 31, 2017, Natale emailed the Employer regarding the split, writing, in part,

The UGSOA International Executive Board made the determination to split Local 217 because of internal issues and various other reasons. Effective immediately Local 217 will be split into 217 and 217B.
...

At this point, all terms will remain the same, except for modification of the recognition clause of the CBA. Once an election is held for the new 217B, we will schedule negotiations for this group.

(Joint Exhibit 12). Natale also discussed the separation face-to-face with David Chapla, the Employer's Vice President of Labor Relations. Natale told Chapla that once Local 217B had selected a board, Local 217B would begin the process of negotiating a collective bargaining agreement. Until that point, the terms of the existing collective bargaining agreement would be applied to both Local 217 and Local 217B. (Natale, 112, 121-23). The Employer continued to apply the terms of the collective bargaining agreement to Local 217B as requested. (Natale, 123). The Employer raised no objection to the creation of Local 217B. (Natale, 134).

¹² UGSOA and Allied agreed to extend the 2014 to 2017 collective bargaining agreement to May 30, 2017 while they bargained over the terms of a successor agreement. (Joint Exhibit 2). Subsequently, UGSOA and Allied executed two further agreements extending the collective bargaining agreement first to July 31, 2017 (Joint Exhibit 3) and then to October 1, 2017. (Joint Exhibit 4). Thereafter, Allied lost its security services contract with FPS. On September 25, 2017, the successor contractor, Triple Canopy, executed an agreement assuming the 2014 to 2017 collective bargaining agreement (Joint Exhibit 1) and extending that agreement until April 30, 2018. (Joint Exhibit 5).

Natale testified that no election for Local 217B officers was held because UGSOA had simply not gotten to that point in the process. Local 217B would have been treated like any other new local and Natale would have distributed a mailing for nominations and sample bylaws. Similarly, Local 217B had not begun negotiating a collective bargaining agreement because it had not elected officers. (Natale, 127).

At hearing, Markert testified that she found the split to be disheartening. Markert contended, without any evidence to support it, that \$100,000 was missing from 20 PSOs and that labeling the officers as Local 217B made it harder for them to find answers. (Markert, 33). However, on May 25, 2017, Local 217 issued a letter reviewing the status of certain complaints that had been filed concerning the Local 217 election. The letter also provided an update regarding the health and welfare contribution issue:

Greenlee H&W

Those officers that were owed H&W funds from the former contractor Greenlee Security have had all of owed funds credited and processed to their accounts. The last portion of this process will be for Pentegra to audit each account again and calculate any potential loss or gains. Once this is completed, Greenlee will submit these funds for final processing and resolution.

(Joint Exhibit 43).

Natale explained the benefits of splitting Local 217 into two groups to Goins. (Natale, 132; Goins, 93). Frazier continued to function as a shop steward following the split to Local 217B. (Frazier, 62). Frazier understood

that the International was going to give Local 217B its own negotiating team. (Frazier, 62).

Disaffiliation

Goins testified that he emailed UGSOA on behalf of the entire union following the separation of Local 217 and Local 217B. (Goins, 98). Natale understood that Frazier and Goins were the de facto spokespeople for 217B because they stated multiple times in their communications that they were speaking on behalf of others. (Natale, 133-34).

On June 6, 2017, Goins emailed Sullivan, Natale, and Miller writing,

Desiree, we need to get something straight. These ridiculous attempts to split the Union are futile. This must be voted upon by all parties of the Local involved, which there has been no vote as usual. Also, you must understand, the VA, SSA & IRS are not the only Officers dissatisfied with UGSOA. There are Officers in every building on the contract who are totally fed up with the incompetence of the UGSOA. ALL PSO's with the exception of a small regiment who are on the union board want to disaffiliate. NEWS FLASH! We will not split, that is asinine. We are going to disaffiliate when we are ready. It will be the entire majority of the Local. We are going to vote the UGSOA out and vote a new union in. **The PSO's of the Local are no longer willing to tolerate your theft, your lies, your misrepresentation, your mismanagement of funds and your unfair union practices. The UGSOA is a pathetic disgrace built on totally lies. We want no more affiliation with this crooked, twisted, corrupt association you call an international.** You don't even have a Legal agency affiliate. We will be disaffiliating soon enough. We will be removing the entire Local from under your authority. You will not split us, we stick together. We all go or, we all stay. in the case of the UGSOA, we are all going and we will never do any further union business with the UGSOA ever again!

(Joint Exhibit 45) (emphasis added). Goins testified that he had no evidence that the Union was stealing health and welfare payments and admitted that he accused the Union of corruption without any proof. (Goins, 90-92).

Sullivan replied to Goins, writing,

The International has the right to do this and we did by a majority vote of the International Executive Board. This Executive decision will stand.

You've been saying your group is unhappy, you're not being represented, you're treated differently from the rest of the Local, etc....

Based on all of the emails, it was determined that you would be better served running your own Local. Your own Officials, accounts, contract negotiations, etc...

Your accusations are ridiculous. Don't send me anymore emails calling me a liar, thief, or any other name.

(Joint Exhibit 45). Goins wrote back asking, "This would mean we have our own union board, conduct our own union meetings, set up our own legal team, negotiate our own cba, we would be our own international and we would collect our own union dues right???" (Joint Exhibit 45). Sullivan replied, "You would be your own Local. Your own Board, Your money, etc...." (Joint Exhibit 45). Goins replied, "If this means we will be legally dissaffiliated from the UGSOA and your willing to put it in writing, than let's talk." (Joint Exhibit 45). Sullivan replied, "UGSOA is still your International but you would be your own local." (Joint Exhibit 45). Goins responded stating,

Desiree, we both know this will not work. We don't get along well now, it would be catastrophic if we were a separate local trying to work with an international that

refuses to properly represent us. You forget that! It is a total disaffiliation that we need. You even said that in previous emails. Why are you changing now???

We will only consider a split if you are willing to allow us to disaffiliate from the UGSOA and allow every PSO who is dissatisfied with the UGSOA disaffiliate as well. We will need this in writing.

(Joint Exhibit 45). Pharrell also sent a reply to Sullivan noting, “Well you and the whole international need to understand that majority of local 217 is unhappy with ugsoa period.” (Joint Exhibit 44). At hearing, Natale testified that it was clear based on Goins email that the Local 217B PSOs no longer wanted ties to UGSOA whether it pertained to benefits or to the union in general. (Natale, 126).

Sullivan responded writing,

We don’t have to represent any of you. We can disaffiliate with you just as you can have an election to go. If that’s your choice, that’s fine too. I’ll send the notice out by the end of the week. These are called protected activities and we all have a right to them.

We “picked” the buildings that were sending us emails saying they weren’t happy. We separated you so that you could operate independently. Your own account, officials, negotiations, etc...

I’m not your employee, I’m your Union Sister. We’re all in the Union. That’s what a Union is. Working together to improve the terms and conditions of employment for everyone. And rest assure, I’ve paid a lot of Dues to this Union and I’m not talking just about Dues payments.

So in summary, we separated you so you could “run your own show” and not be under the Local 217 Board. If that’s not what you want, let me know and I’ll take care of things on my end.

(Joint Exhibit 44).

On June 6, 2017, the Executive Board voted by email to disclaim interest in Local 217B. On June 6, 2017, Natale emailed the Executive Board writing, in part,

We recently voted to split Local 217, and now the separated portion, Local 217B, has now said they do not want to be affiliated with UGSOA at all.

After speaking with Desi, we feel the best option is to disaffiliate with the new Local 217B only at this time.

(Joint Exhibit 19). Sullivan; Mike LeBlanc, DHS Vice President; McMillen; Jose Diaz, Central Regional Director; Tom Dove, Secretary/Treasurer; Carey; Miller; and Burke voted to disclaim interest in the unit. (Joint Exhibit 19).

Natale testified that the International disaffiliated from Local 217B because the PSOs expressed dissatisfaction. (Natale, 113). Even after Natale had explained to the PSOs that Local 217B would be its own entity with its own board, collective bargaining agreement, and bank accounts, he continued to receive complaints. (Natale, 125).

On June 7, 2017, Natale notified PSOs within Local 217B by letter that UGSOA had disclaimed interest in the unit, writing, in part,

I am writing to inform you that UGSOA International Executive Board has taken a unanimous vote to disaffiliate from Local 217B membership. . . .

This Executive decision is being implemented pursuant to the International Constitution, Article VII, Section 2, subsection (t) and at the request of the Members working at these specific locations.

(Joint Exhibit 13).

Following the disclaimer, UGSOA requested that the Employer cease withholding dues from Local 217B PSOs. (Joint Exhibit 14). While the International did not negotiate the disclaimer of Local 217B with the Employer ahead of the Executive Board vote, (Natale, 109), on June 12, 2017, Chapla sent Natale a letter related to the disclaimer stating, in part,

We are in the process of evaluating what response the Company has to this development. In the meantime, however, we would like to meet and discuss the effects of this disaffiliation. We make this request without prejudice to the Company's right to take the position that UGSOA no longer enjoys majority support as to the bargaining unit.

(Joint Exhibit 16).

After the disclaimer of Local 217B, Natale had discussions with Chapla regarding impacts on benefits and staffing by phone and email. (See Joint Exhibit 16). The Employer felt that there would be no impact on PSOs' overtime since PSOs so infrequently worked overtime at sites other than their assigned sites. Following the disclaimer of Local 217B, PSOs would not be able to bid on positions at sites other than the VA, SSA, and IRS sites. (Natale, 116). Recognizing the disclaimer, Dunigan sent a memorandum to Allied supervisors on June 26, 2017 indicating that PSOs at the IRS, SSA, and VA sites could no longer work at other sites and vice versa. (Joint Exhibit 25).

While no immediate issues were identified as a result of the disclaimer, Natale agreed to discuss matters with the Employer as they arose. (Natale, 110, 123-24). After the end of June 2017, the Local 217B officers could not remain in the International's health and welfare plan. (See Joint Exhibit 15).

The Employer requested that the International keep the Local 217B PSOs on its health insurance plan until the end of the July 2017. Ultimately, since both the International and the Employer had the same benefit plan through the Boon Group, the Employer kept the officers' benefits active and backdated the benefits to July 1, 2017. (Natale, 124).

Natale received no notification from other employees indicating disagreement with Frazier and Goins until after the disclaimer. (Natale, 134). After the disclaimer, some employees at the IRS site notified Natale that they still wished to be a part of UGSOA. (Natale, 133). The International intervened in a subsequent representation election because it had received communications from these PSOs at the disaffiliated sites. (Natale, 115; see Joint Exhibit 20).

Markert testified that she was unhappy about the disaffiliation because they did not have answers and they had made it clear that they did not want to disaffiliate until they had their money. (Markert, 34). Markert testified that after the disaffiliation she no longer had union representation. Markert elaborated that she could not recall when that occurred because she never felt she had any representation or that she was a part of a union. (Markert, 34).

After the disclaimer of Local 217B, PSOs were offered benefits through the Employer. (Joint Exhibit 52; see Joint Exhibit 53).

Following a representation hearing (Joint Exhibit 7), on December 22, 2017, the Philadelphia Security Officers Union was certified as the bargaining representative for "all full-time and regular part-time security officers employed

by the Employer at the Federal Protective Service (FPS) sites in Philadelphia, Pennsylvania and surrounding counties.” (Joint Exhibit 8; see Markert, 35).

III. ARGUMENT

The General Counsel will likely argue, as alleged in the Complaint, that UGSOA breached its duty of fair representation when, starting in April 2017, it simply refused to represent a portion of the Local 217 bargaining unit to retaliate against certain PSOs for engaging in activities in opposition to UGSOA. The General Counsel’s theory, however, ignores the evidentiary realities showing that, pursuant to existing internal procedures, UGSOA first lawfully reorganized Local 217 into two distinct entities, due to internal strife. Entirely unmotivated by an unlawful purpose, in April of 2017, Respondents reorganized Local 217 into two groups, Local 217 and Local 217B, comprised of frequently subcontracted sites, because it became clear that Local 217 could no longer effectively function as a whole due to mounting tensions often typified by unsubstantiated allegations made against the Local and International.¹³ While certain PSOs admittedly lodged frequent complaints against Respondents, the evidence plainly shows that Respondents routinely helped resolve those PSOs’ problems including by assisting with the recoupment of missing health and welfare contributions, which was the most important of their complaints.

¹³ While the Complaint contends that UGSOA “disaffiliated” with a portion of the bargaining unit in April of 2017, that is a clearly erroneous statement of the facts. The evidence shows that the disaffiliation in this matter did not occur until June of 2017.

Thereafter, in June of 2017, UGSOA permissibly disclaimed interest in Local 217B, made up of the frequently subcontracted sites, for legitimate, non-discriminatory, purposes. UGSOA ceased representing Local 217B only after its reorganization attempt failed when the Local 217B PSOs made it clear that they did not wish to have any continuing connection to the International. If accepted, the theory advanced by the General Counsel would misguidedly impose upon unions a duty to continue to represent workers where the union can no longer do so effectively and where the workers themselves no longer wish to be associated with the union. Such a policy would not serve to enhance the stability of labor relations and, in fact, runs contrary to existing Board precedent permitting unions to disclaim interest in bargaining units because of even extreme forms of dissident activity.

1. The Evidence Presented At Hearing Shows That UGSOA Lawfully Reorganized Local 217 In April of 2017 For Legitimate, Non-Discriminatory, Purposes And Did Not Refuse To Represent PSOs in Either Local 217 Or Local 217B.

In April 2017, UGSOA created Local 217B and transferred the representation of the VA, SSA, and IRS sites from Local 217 to Local 217B. Contrary to the General Counsel's claims, UGSOA reorganized Local 217 for legitimate, non-discriminatory purposes and did not cease representation of the VA, SSA, and IRS PSOs following the split. UGSOA reorganized Local 217 only after receiving a series of vociferous complaints about the quality of representation provided by UGSOA to the VA, SSA, and IRS PSOs. The evidence plainly shows that UGSOA undertook the reorganization, pursuant to

its internal union procedures, to attempt to permit PSOs at the IRS, VA, and SSA sites to have a greater “say” in their own representation and to diffuse growing anger and dissatisfaction within Local 217 rather than to suppress dissident activity.

Prior to the reorganization, the record contains ample evidence of continuous, and routinely, baseless, criticism of UGSOA and its handling of the issues raised by the VA, SSA, and IRS sites as well as disharmony within Local 217. Simultaneously, the evidence reveals that UGSOA and its benefit administrators were diligently responding to inquiries and addressing the problems of the so-called dissidents. Throughout 2016 and 2017, Markert, Frazier, and Goins repeatedly raised issues regarding health and welfare contributions for PSOs who had worked at sites under subcontractors that failed to make the requisite payments. No matter how hostile the tone of those communications, UGSOA and its third-party administrators routinely responded to those requests offering assistance. (See Joint Exhibits 27, 28, and 29).

For instance, on one occasion, Goins inquired about the status of health insurance for two PSOs and, after review of the facts, he was promptly told that those PSOs indeed had active coverage and that he should provide the name of the persons who attempted to contact the insurer and identify how they attempted to contact the insurer. (See Joint Exhibit 26). Goins did not provide additional information but instead advised that he was filing a complaint with DOL and that it was BSI’s “final chance” to resolve issues before they became

legal. (Joint Exhibit 28).¹⁴ Although, at UGSOA's request, BSI was actively conducting audits and pursuing missing funds that a subcontractor had failed to pay, Goins accused BSI, without supporting evidence, of being unable to account for a significant amount of money. (Joint Exhibit 28). Like Goins, Markert sent similarly accusing emails to BSI regarding health and welfare funds contending that UGSOA's disregard was "disheartening and down right criminal," apparently without any evidence of criminal behavior, and received prompt responses detailing BSI's efforts to restore impacted PSOs' accounts. (Joint Exhibits 27 and 29).

Despite UGSOA's continuous efforts to resolve health and welfare problems culminating in BSI locating all missing funds and completing the reconciliation of the accounts as necessary, Frazier, Markert, Goins, and other PSOs at the VA, IRS, and SSA sites continued to criticize the quality of UGSOA's representation while making entirely unsubstantiated claims. In March of 2017, Goins contended that there was \$150,000 of unaccounted funds missing from PSOs accounts as well as thousands of dollars in unpaid medical expenses. (Joint Exhibits 30 and 54). Frazier similarly contended that PSOs had uncovered medical bills ranging from \$2,500 to \$35,000. (Joint Exhibit 38). By that point in time, BSI was in the processing of recovering only \$23,000 of missing funds from a delinquent contractor. (Joint Exhibit 54). Frazier, Markert, and Goins failed to provide any documentation of missing

¹⁴ No evidence exists to suggest that any Union representative ever tried to dissuade Goins from making such a complaint or any subsequent complaint to the DOL in 2017.

health and welfare contributions or of unpaid medical expenses to support their claims.

Even at hearing, Frazier contended that nothing had happened to resolve issues with the PSOs' 401(k) accounts and health insurance problems before acknowledging on cross-examination that issues had in fact been solved and that he never submitted paperwork regarding uncovered medical bills or sought reimbursement. Similarly, Markert testified that PSOs were missing \$100,000 as of the time Local 217 and Local 217B were separated although by May 25, 2017, BSI had recovered all funds and credited them to the PSOs accounts and was undertaking the process only of calculating gains and losses on the restored funds. (Joint Exhibit 43).¹⁵

Contrary to the General Counsel's allegation that UGSOA was attempting to suppress or retaliate against "dissident" activities, UGSOA as well as its third party administrators, actively supported Frazier, Markert, and Goins in resolving ongoing problems and also in their participation in the administration of Local 217.¹⁶ Frazier testified at hearing that he was initially removed as a steward by the Local. Frazier was restored to the steward position shortly thereafter by the International. (Frazier, 52-54). Similarly, Markert regularly

¹⁵ Even at hearing, the utter failure of UGSOA's relationship with the IRS, VA, and SSA PSOs was on display in the testimony of Frazier, Markert, and Goins given over a year after they selected a new representative. What motivation could Frazier possibly have had to contend that UGSOA did not assist in resolving benefit issues when it and its administrator had recouped significant funds from delinquent contractors?

¹⁶ Following the June 2017 disclaimer, UGSOA successfully reconciled all of the health and welfare accounts.

attended union meetings and raised ongoing issues at those meetings. Markert participated on the Local 217 bargaining committee and her participation in that committee was welcomed. (Markert, 30, 36-37). UGSOA was not engaged in an effort to prevent PSOs from conducting alleged “dissident” activities; rather, the evidence shows that UGSOA regularly assisted those PSOs even utilizing them as stewards and members of the bargaining committee.

Nonetheless, the record is replete with evidence showing internal tensions within Local 217 and that the SSA, IRS, and VA PSOs felt that their local representatives were not adequately assisting them. In the Spring of 2017, Goins filed a complaint with DOL leveling a multitude of allegations against Local 217 including allegations regarding the conduct of the Local’s election, Local 217’s failure to provide an itemized expenditure report, Local 217’s refusal to extend the collective bargaining agreement, Local 217’s failure to respond to allegations of unauthorized spending, Local 217’s failure to conduct a forensic audit, and Local 217’s failure to retain a local attorney to assist with contract negotiations. (Joint Exhibit 33). In her communications, Markert asserted that the subcontracted PSOs represented themselves through the transition of subcontractors with “no assistance, guidance, or support from the Local.” (Joint Exhibit 38). Markert also complained that Local 217 would not assist her with newly signed authorization cards although they had been routinely accepted in the past. (Joint exhibit 32). Frazier maintained that Local 217 could not resolve PSOs’ issues with health and welfare contributions so he, Frazier, and Goins raised those issues with the International.

In April 2017, internal tensions rose further when Markert, Frazier, and Goins, among approximately 25 PSOs, including PSOs not assigned to the SSA, VA, and IRS sites, were not permitted to run for office or vote in the Local 217 election. While Markert, Goins, and Frazier were fairly disqualified from participating pursuant to the Local 217 bylaws due to their failure to pay dues, they vehemently protested their exclusion sending a multitude of heated and accusatory emails.¹⁷ (See Joint Exhibits 31, 34, and 38). For example, on May 3, 2017, Frazier accused Natale of sending communications full of lies, deceit, and indirect threats. (Joint Exhibit 38). PSO Martin Gedeus further contended that Natale had “no interest in fighting for officer’s rights[.]” (Joint Exhibit 38).¹⁸

By the Spring of 2017, Natale explained at hearing that he felt that the relationship between UGSOA and the Local 217 PSOs was “shattered” and he believed that UGSOA could not resolve issues to the satisfaction of its members. Natale confirmed that the International had successfully split locals

¹⁷ The DOL found no violation based on Local 217’s exclusion of PSOs who were not in good standing from participating in the election.

¹⁸ Although the Employer was negligent in failing to deduct dues for PSOs, the PSOs themselves were responsible for knowing that their dues were not being deducted from their paychecks. Indeed, the dues amount appeared as a separate line on their paychecks. Moreover, UGSOA’s refusal to allow these PSOs to run for office or vote in the election was entirely non-discriminatory since they were treated the same as similarly situated non-dues paying PSOs in the rest of the bargaining unit. Approximately 25 PSOs, including PSOs not assigned to the VA, SSA, and IRS sites, were not allowed to participate in the election due to their failure to pay dues. (Natale, 119-120, 127, 133).

into separate groups to resolve internal tensions in the past.¹⁹ The International's Constitution permits the International President to reorganize or separate existing Local Unions by a two-thirds vote of the International's Executive Board. (Joint Exhibit 9). Pursuant to that procedure, the Executive Board created Local 217B following a vote initiated by Natale who noted that "the situation has gotten to the point that the two groups are not communicating well and they feel they would be better served operating on their own[.]" (Joint Exhibit 18).

The record evidence confirms that UGSOA undertook the separation in good faith to permit the Local 217B PSOs to have a greater role in their representation not to cease representing those PSOs. In the letter advising PSOs of the creation of Local 217B on May 22, 2017, UGSOA notified the PSOs that CBA preparations, an election of a board of officers for Local 217, and the adoption of bylaws would follow. (Joint Exhibit 11). Natale explained the benefits of becoming a separate local to Goins who had served as a representative for the group. Meanwhile, following the reorganization, Frazier continued to function as a shop steward for his site.

¹⁹ The General Counsel may argue that Respondents were planning to disclaim interest in Local 217B regardless of the initial reorganization. UGSOA admittedly suggested the possibility of the disaffiliation to the IRS, SSA, and VA PSOs prior to the announcement of the reorganization on occasions when those PSOs repeatedly raised their dissatisfaction with UGSOA's representation. (See Joint Exhibits 54, 30, and 34). UGSOA, instead, chose to reorganize Local 217 to create two units because that approach had been successful for it in the past. UGSOA's conduct following the reorganization was consistent with a desire to continue in their representation of those PSOs; UGSOA discussed the benefits of the separation with PSOs and also conferred with the Employer about the impacts of the change.

Further, following the separation, Natale had discussions with the Employer about the impacts of the separation. UGSOA requested that the terms of the existing collective bargaining agreement, with the exception of the recognition clause, be applied to both Local 217 and Local 217B until Local 217B could negotiate its own collective bargaining agreement. The Employer did, in fact, continue to apply the terms of the collective bargaining agreement to Local 217B as requested and raised no objection to the creation of Local 217B despite the scope of the recognition clause in the existing collective bargaining agreement. (Natale, 123, 134).

Contrary to claims that UGSOA was attempting to retaliate against dissident PSOs, UGSOA sought to reorganize Local 217 as two groups in an attempt to alleviate growing hostility and salvage its broken representative relationship with the unsatisfied PSOs.²⁰ As shown above, a breakdown in the relationship between Respondents and the SSA, VA, and IRS site PSOs and internal dissatisfaction within Local 217 was preventing Respondents from functioning effectively as union representatives. The evidence shows that Respondents did not cease or refuse to represent the Local 217B PSOs as a result of the reorganization.

²⁰ The General Counsel may contend that in doing so, UGSOA intentionally created a minority group that it could marginalize leaving Local 217B unable to defend its own interests. Local 217B included approximately 82 PSOs while Local 217 had about 138 PSOs. (Joint Exhibits 55 and 56). Clearly, UGSOA did not create Local 217B, carving out nearly half of the PSOs from the existing Local 217, as a farce so that it could refuse to represent Goins, Markert, and Frazier.

2. UGSOA Lawfully Disclaimed Interest In Local 217B, Made Up Of The Frequently Subcontracted Sites, For Legitimate, Non-Discriminatory Purposes.

Despite UGSOA's efforts to resolve internal issues and dissatisfaction within Local 217 through reorganization, UGSOA was ultimately unsuccessful due to the PSOs' rejection of Local 217B and UGSOA in its entirety. The record shows that the creation of Local 217B failed to quell tensions between the SSA, VA, and IRS PSOs and UGSOA or renew confidence in UGSOA's representation abilities. Instead, the SSA, VA, and IRS PSOs responded by making further unsubstantiated and defamatory criminal allegations against UGSOA.

On June 6, 2017, Goins, who regularly acted as a de facto spokesperson for the SSA, VA, and IRS sites, sent the International a number of communications ultimately rejecting the creation of Local 217B and expressing a desire to leave UGSOA. Goins maintained that a majority of PSOs wished to disaffiliate from UGSOA stating, in part,

The PSO's of the Local are no longer willing to tolerate your theft, your lies, your misrepresentation, your mismanagement of funds and your unfair union practices. The UGSOA is a pathetic disgrace built on totally lies. We want no more affiliation with this crooked, twisted, corrupt association you call an international[.]

(Joint Exhibit 45). At hearing, Goins admitted that he had no evidence that the Union was stealing health and welfare payments and acknowledged that he accused the union of corruption without any proof. Even after the International affirmed that Local 217B would be given its own board and conduct its own negotiations, Goins maintained that a "total disaffiliation" was

necessary and that the PSOs did not wish to form Local 217B. (Joint Exhibit 45; see Joint Exhibit 44).

As a result of the failed reorganization of Local 217, UGSOA permissibly disclaimed interest in Local 217B, made up of the frequently subcontracted sites, for legitimate, non-discriminatory, purposes. An exclusive bargaining agent may unequivocally and in good faith disclaim further interest in representing a bargaining unit. Dycus v. N.L.R.B., 615 F.2d 820 (9th Cir. 1980). However, a disclaimer will not be given effect if it inconsistent with the union's conduct nor if it is made for an improper purpose such as the evasion of the terms and obligations of a collective bargaining agreement. Dycus v. N.L.R.B., 615 F.2d 820 (9th Cir. 1980) (upholding finding that union validly disclaimed interest in unit for a legitimate purpose to further organization of firefighters and transferred jurisdiction over employee to another local where it did not force representation on employee in the unit).

Here, UGSOA clearly and unequivocally disclaimed interest in Local 217B for legitimate and non-discriminatory purposes and then took action consistent with ending its representation of the Local 217B PSOs. UGSOA completed the disaffiliation or disclaimer pursuant to a vote of the Executive Board according to its existing internal rules. The record shows that UGSOA disclaimed interest in Local 217B not to retaliate against dissident members

but because a total breakdown of the representative relationship had occurred.²¹

At the time of the disclaimer, numerous communications demonstrate that UGSOA could no longer effectively represent the SSA, VA, and IRS site PSOs. The de facto representatives of those sites continued to make baseless complaints of corruption and criminal conduct against the International even while the International assisted them in resolving issues. Further, the SSA, VA, and IRS PSOs, through their de facto representatives, made clear that they no longer wished to be associated with UGSOA in any fashion. Rather than an attempt to discriminate against “dissident” PSOs, who UGSOA had continuously assisted, the evidence shows that UGSOA disclaimed Local 217B because the representative relationship had reached a breaking point with the impacted PSOs simultaneously rejecting UGSOA.

While the General Counsel will likely rely on Skibeck PLC, Inc., 345 N.L.R.B. 754 (2005) and Lanier Brugh Corp. 339 N.L.R.B. 131 (2003) to support its allegation that Respondents breached their duty of fair representation by discriminating against “dissidents,” those cases are distinguishable. First, Skibeck PLC, Inc., 345 N.L.R.B. 754 (2005) involved an allegation that a Union violated Section 8(b)(3) by refusing to bargain with the employer over employees within the unit employed in Ohio. The Board found that the Union violated Section 8(b)(3) of the Act by effectuating a unilateral

²¹ For instance, Markert testified that she did not know when the disaffiliation occurred because she never felt that she was represented by UGSOA or that she was a part of the union.

change in the scope of the bargaining unit by unilaterally asserting to the employer that it would no longer represent certain employees in the unit without the employer's consent following a jurisdictional dispute and arbitration award directing the union to cease representing employees in Ohio. Skibeck, 345 N.L.R.B. at 755. The NLRB explicitly declined to pass on the issue of whether Local 14693 also violated Section 8(b)(1)(A) or the Administrative Law Judge's finding that a disclaimer not co-extensive with the scope of the bargaining unit was ineffective because it was "equivocal." Skibeck, 345 N.L.R.B. at 755; cf Manitowac Shipping, 191 N.L.R.B. 786 (1971).²²

In Lanier Brugh Corp., 339 N.L.R.B. 131 (2003) Pocatello drivers, employed by Lanier Brugh, were jointly represented in a system-wide unit by various locals and joint counsels known as the Joint Representative. The Board found that the Joint Representative violated Section 8(b)(1)(A) by

²² As discussed in greater detail *infra*, UGSOA's disclaimer should be held to be co-extensive with the scope of the bargaining unit. Although the parties did not alter the recognition clause of the Local 217 collective bargaining agreement, the Employer raised no objection to the alteration of the scope of the bargaining unit when UGSOA notified it of its reorganization. Even after the June 2017 disclaimer, the Employer's actions show that it no longer included the Local 217B PSOs as a part of Local 217. The Employer transitioned the Local 217B PSOs to its benefit plans and sent a memorandum indicating that the IRS, SSA, and VA site PSOs could no longer work at other sites and vice versa. The Employer did not file any charges with the National Labor Relations Board challenging the alteration of the unit. Even if the disclaimer were not coextensive with Local 217B, a union may disclaim interest in a severable portion of a bargaining unit. See Manitowac Shipping, 191 N.L.R.B. 786 (1971) (finding that Boilermakers Union effectively disclaimed interest over crane operators, in the face of a clarification petition filed by IBEW, where the crane operators classification was included in the Boilermakers Union's collective bargaining agreement).

refusing to represent the Pocatello drivers because they exercised their right under Idaho's right to work law to refrain from union membership. Unlike Lanier Brugh, UGSOA did not cease representing a small group of employees because those employees refused to become union members or because those members engaged in protected, concerted activities. Instead, here, Respondents disclaimed representation of three sites including approximately 80 PSOs when representatives from those sites indicated that they no longer desired to be connected with UGSOA and their dissatisfaction led to a breakdown in the representative relationship.²³

The General Counsel will argue that this case is comparable to Lanier Brugh because PSOs within Local 217B were engaged in "dissident" activities, e.g. complaints, and those complaints triggered UGSOA to disclaim interest in Local 217B. While UGSOA received numerous complaints from Markert, Goins, Frazier, and other PSOs at the SSA, VA, and IRS sites, UGSOA disclaimed interest in Local 217B not because PSOs were making complaints but because those complaints, as well as the PSOs repeated requests to end their association with UGSOA, were symptoms of UGSOA's inability to represent those PSOs to their satisfaction and a complete breakdown of the representative relationship. The evidence shows, as discussed in detail supra,

²³ Here, UGSOA contends that its actions were distinguishable from Lanier Brugh because it disclaimed interest in the entirety of Local 217B rather than a select number of dissident employees. Even if the Local 217B PSOs were construed as constituting merely a portion of the Local 217 bargaining unit, not a separate unit of employees, UGSOA's actions are still unlike those involved in Lanier Brugh because UGSOA did not act for an unlawful, retaliatory purpose.

that UGSOA routinely and continuously attempted to assist PSOs with the issues that formed the basis for their complaints and was not trying to curb PSOs' union activities.

Further, General Counsel's theory presumes that UGSOA was under an obligation to continue to represent Local 217B PSOs despite their repeated rejection of that representative relationship. While there is generally a dearth of precedent regarding disclaimers, particularly with regard to the legality of disclaimers outside of representation proceedings/contract bar challenges, under existing Board precedent, unions may lawfully disclaim interest in bargaining units because of the two most extreme forms of dissident activity: the filing of deauthorization petitions and decertification petitions.

A union may disclaim its role in response to the employees' filing of a deauthorization petition or even the loss of a deauthorization election. Bake-Line Products, Inc., 329 N.L.R.B. 247 (1999). Indeed, a union may do so without providing employees with any objective evidence that its continued representation of them would be infeasible. Bake-Line Products, Inc., 329 N.L.R.B. 247 (1999); see also American Sunroof, 243 N.L.R.B. 1128, 1128-29 (1979) (giving effect to disclaimer undertaken in response to the filing of a deauthorization petition) NLRB v. Circle A&W Products, 647 F.2d 924, 926-27 (9th Cir. 1980) (affirming order requiring employer to bargain with newly elected union where prior union disclaimed representation after it lost deauthorization election and where dispute over union security clause was union's sole reason for disclaiming interest); Riverfront Distributing, Inc., 1995 WL 1918089 (ALJ

Decision 1995) (dismissing allegation that union violated Section 8(b)(1)(A) by refusing to negotiate over the effects of the closure of the salesman's unit for an unfair, arbitrary or discriminatory reason because the employees deauthorized union).

Similarly, a union may lawfully disclaim representation of employees in response to the filing of a decertification petition. Bonita Ribbon Mills, 88 N.L.R.B. 241, 241-42 (1950) ("The Board has repeatedly held, however, that no question concerning representation exists, and no decertification election may be held, when the union sought to be decertified has, as here, disclaimed interest in representing the employees involved."); Federal Shipbuilding & Drydock Co., 77 N.L.R.B. 463, 464 (1948) ("The Union's disavowal of any claim or wish to represent the employees eliminates the question concerning representation[.]").

Aside from precedent establishing a Union's right to disclaim representation even when motivated by dissident activities, it is not clear that the so-called dissident activities cited by the General Counsel in this case even constitute protected union activities. See Mastec Advanced Technologies, 357 N.L.R.B. 103, 107 (2011) (noting that statements may be either maliciously untrue or so disloyal and reckless as to warrant removal of the Act's protection and describing maliciously untrue statements as those "made with knowledge of their falsity or with reckless disregard for their truth or falsity."). The alleged dissident activities at issue largely consisted of the impacted PSOs implicitly accusing UGSOA and its third-party administrators of stealing their health and

welfare funds, although it was crystal clear to all involved that subcontractors had failed to ever make the requisite benefit payments. At hearing, Goins admitted that he accused Respondents of corruption without any evidence to support such a claim. Although seeking very large, allegedly missing, sums, Markert, Goins, and Frazier never produced any documentation substantiating their claims. As of June 2017, the evidence shows that UGSOA had recovered all delinquent contributions from subcontractors and that Goins knew he had no evidence of UGSOA actually engaging in corruption or theft. Nonetheless, Goins, the de facto representative of the Local 217B PSOs, continued to baselessly accuse UGSOA of criminal conduct.

Indeed, the theory propounded by the General Counsel does not advance a policy of stable labor relations. Pursuant to the General Counsel's theory, a union could not disclaim interest in representing workers where those workers have repeatedly expressed a lack of confidence in the union, through actions up to and including making entirely unsubstantiated criminal allegations against the union, while, at the same time under existing Board precedent, a union could lawfully disclaim employees engaging in the protected action of filing a deauthorization or a decertification petition. See Bake-Line Products, Inc., 329 N.L.R.B. 247 (1999). Imposing a representative obligation upon a union that can no longer continue to represent a group of employees for other than financial reasons would appear contrary to the Board's existing precedent. Board policy should permit a union to disclaim interest in an entire bargaining unit or an identifiable portion of a bargaining unit, in the absence of any

objection of the Employer, because of a breakdown in the representative relationship and its ability to continue to effectively represent those employees whether that breakdown is caused by financial tensions or personality conflicts. The evidence shows that UGSOA disclaimed interest in the Local 217B PSOs because the representative relationship had been destroyed, just as in the case of the filing of a decertification petition, and UGSOA did not cease to represent those PSOs for any unlawful, retaliatory reasons.

3. Even If, *Arguendo*, The Separation Of Local 217B Constituted A Disclaimer Of The Local 217B Sites, UGSOA Did Not Violate The Act.

The General Counsel may argue that UGSOA disclaimed interest in the IRS, VA, and SSA PSOs on April 26, 2017 when it voted to reorganize Local 217 and transfer representation of those sites to Local 217B. Even if such a claim were to be credited, ample evidence exists in the record showing that UGSOA reorganized the groups for a lawful purpose using legitimate internal union procedures. As described in detail above, UGSOA reorganized the groups because the representative relationship between itself and the IRS, SSA, and VA PSOs had been destroyed not to simply retaliate against those PSOs for engaging in dissident activities. When the IRS, SSA, and VA PSOs subsequently rejected Local 217B as their representative, UGSOA ceased attempting to impose itself upon those PSOs and did not engage in any coercive action.

In Dycus v. N.L.R.B., 615 F.2d 820 (9th Cir. 1980) affirming Grinnell Fire Protection Systems Company, Inc., 235 N.L.R.B. 1168 (1978), the Ninth Circuit

affirmed that a local union, Local 598, did not violate Section 8(b)(1)(A) by transferring jurisdiction of the bargaining unit to another local, Local 986. Local 986 requested that the Joint Council transfer jurisdiction over a unit from Local 598 to Local 986 in connection with an effort to organize firefighters. The union did not ask members to consent to the transfer. A member of the unit, Dycus, was then declared ineligible to participate in a Local 598 election because he was no longer a member of the union. The Ninth Circuit found substantial evidence to support the Board's conclusion that the transfer was approved in accordance with union regulations and was motivated by legitimate business considerations, rather than to suppress Dycus' dissident activities, commenting, in part,

The agreement by Local 598 to transfer jurisdiction of the bargaining unit to Local 986 constituted an unequivocal disclaimer, and the record supports the conclusion that Local 598 did not disclaim for an improper purpose.

The record also supports the Board's finding that Local 986 did not seek to force its representation upon Dycus. Local 986 urged Dycus to become a member of that local but it sought to disclaim interest in representing Dycus when Dycus refused unequivocally to accept Local 986 as his representative. After Local 598's disclaimer and the attempted transfer, Dycus was free to accept any willing labor organization as his representative or to remain unrepresented.

Where there is an attempt to substitute a new employee representative for the existing certified representative without an election or continuity of representation, a question of representation exists, and the Board will not amend the certification of the bargaining agent, nor will it compel an employer to bargain with the new employee representative. We find no support, however, for the proposition that the

attempt to substitute a new employee representative constitutes an unfair labor practice in the absence of coercive conduct aimed at compelling an employee to accept the new representative. The Board held otherwise in this case, and we agree.

In sum, the attempted transfer of representation reflected a legitimate union interest, contravened no national labor policy, and was effected in a noncoercive manner. Therefore, the Board properly concluded that the decision to transfer was an internal union matter protected by the proviso to section 8(b)(1)(A).

Dycus, 615 F.2d at 826 (internal citations omitted). In its opinion, the Ninth Circuit did not address whether Local 986 ever became Dycus' exclusive bargaining representative. Dycus, 615 F.2d at 827. In its decision, the Board noted that Local 986 also disclaimed interest in representing Dycus where it became clear that Dycus did not want to be represented by Local 986 finding no violation of the Act:

Depriving the unit of the benefits of the collective-bargaining agreement by withdrawing as representative can be coercive as a matter of law only if the unit has a continuing right to those benefits. And if the unit has that right it can only be because a collective-bargaining representative has that duty. Without that duty, the proposition that Dycus was coerced by the incumbent's withdrawal evaporates: he would be no more coerced than any employee electing whether to be represented by a particular labor organization or not to be represented at all. Withdrawal is not a breach of the duty of fair representation. For that duty is the corollary to an exclusive representative's power and authority. The representative having disclaimed that power and authority, the predicate for the duty fails. Therefore, there was no coercion. Without that "coercion," the attempted transfer may be seen for what it is, an internal union matter. The transfer, as the dissent however reluctantly concedes, was prompted by

legitimate reasons. No persuasive reason is advanced why the nondiscriminatory attempt to substitute one local of an international union for another should be unlawful. The incumbent disclaimed any further interest in representing the unit and Local 986 undertook to represent Dycus until it became clear that he did not desire its representation. At that point, Local 986, like its predecessor, disclaimed interest in representing Dycus. That is not the action of a union seeking to force representation on an unwilling unit; and that would be the only reasonable basis for finding any violation by any of Respondents.

In sum, there was nothing illegal in either the attempt to change, or the disclaimer of, representation.

Grinnell Fire Protection Systems Company, Inc., 235 N.L.R.B. 1168, 1169 (1978). See SEIU Local 250, 30 NLRB Advice Mem. Rep. 40028 (Advice Memorandum 2002) (concluding that union effectively disclaimed interest where its conduct revealed an intention to transfer representational status to SEIU Locals where union entered into service agreements delegating all collective bargaining and grievance adjustment duties to SEIU indemnifying the union for breaches committed by SEIU, and then left all aspects of grievance adjustment and collective bargaining to SEIU and further concluding that union disclaimed interest for a lawful reason to combine resources with SEIU and augment efforts to organize workers noting that, absent coercion, a transfer of jurisdiction between two unions over particular represented union members is a privileged internal union matter and does not, alone, violate Section 8(b)(1)(A)).

Here, as in Dycus, UGSOA transferred representation of the IRS, VA, and SSA PSOs from Local 217 to Local 217B for legitimate reasons pursuant to its

existing internal union procedures. When the IRS, VA, and SSA PSOs rejected the representation of Local 217B, UGSOA did not undertake any coercive action and, instead, permitted those PSOs to reject the transfer of representation. Thus, even if the reorganization of Local 217 could be construed as a disclaimer of the Local 217B sites, Respondents did not engage in any sort of unlawful conduct with respect to the Local 217B PSOs.

Indeed, it is established that a union may disclaim interest in a severable portion of a bargaining unit. See Manitowac Shipping, 191 N.L.R.B. 786 (1971) (finding that Boilermakers Union effectively disclaimed interest over crane operators, in the face of a clarification petition filed by IBEW, where the crane operators classification was included in the Boilermakers Union's collective bargaining agreement); Southern California Printing Specialties District Council 2, 1983 WL 29348 (Advice Memorandum 1983) (concluding that union did not violate Section 8(b)(1)(A) by disclaiming interest in representing a portion of its bargaining unit where union determined that it no longer wished to do the employer the favor of representing employees in one unit so that the employer did not have to deal with two unions noting that as a general rule unions may effectively disclaim interest in a bargaining unit or severable portion thereof even during the term of a collective bargaining agreement and absent some arbitrary or invidious reasons for a decision to disclaim, there was nothing to suggest that a union had an obligation to claim representational rights).

In challenging the reorganization of Local 217 and subsequent disclaimer of Local 217B, no allegations exist contending that UGSOA unlawfully altered the scope of its bargaining unit.²⁴ “It is clear that, by mutual consent, parties can voluntarily change the scope of a bargaining unit, if the new unit is not obviously improper.” Steinmetz Electrical, 234 N.L.R.B. 633 (1978) (dismissing allegation that union violated Section 8(b)(3) where, after an employer association’s withdrawal from association conducting bargaining on its behalf the union refused to negotiate a commercial agreement with the employer association but bargained to agreement on a residential agreement and then formally and unequivocally disclaimed any and all interest in representing employees performing commercial work where the parties thereby mutually agreed to the establishment of a new unit of residential employees which was an appropriate unit and not obviously improper, even where the unit previously consisted of both residential and commercial employees).

Here, the evidence shows that the Employer did not object to the reorganization of Local 217 to include both Local 217 and Local 217B or to the subsequent disclaimer of Local 217B.²⁵ Notably, the Employer did not file any unfair labor practice charges against Respondents as a result of either the

²⁴ The Complaint contains no allegations whatsoever that Respondents violated Section 8(b)(3) of the Act by either unilaterally altering the scope of the unit or by unlawfully refusing to bargain. That is so because the Employer never objected to the change and, in fact, accepted it by action.

²⁵ That Triple Canopy, a successor contractor, took a contrary position in a subsequent representation hearing (see Joint Exhibit 7) does not show that Allied ever objected to the new representational arrangement.

reorganization or disclaimer of Local 217B. While UGSOA and the Employer did not explicitly modify the recognition clause in the agreement, the evidence shows that the Employer engaged Local 217B in discussions regarding the effects of the disclaimer and then, thereafter, enrolled PSOs in benefits through the Employer directly. The Employer also sent out a memorandum indicating that SSA, VA, and IRS site PSOs could not be assigned to other buildings and vice versa. (See Joint Exhibits 25, 52, and 53). The Employer's actions show that the parties accepted the modification of the Local 217 bargaining unit and subsequent disclaimer of the Local 217B PSOs.

Further, Local 217B, comprised of three sites, routinely subcontracted by the Employer, does not constitute an obviously improper bargaining unit even if a larger unit included those sites would also be an appropriate unit. The three distinct worksites comprising Local 217B constituted an identifiable portion of the bargaining unit and was not just a random collection of PSOs. Indeed, the sites forming Local 217B were routinely subcontracted by the Employer giving them distinct concerns from the remaining Local 217B sites. The parties had even previously agreed to alter the scope of the certified bargaining unit even prior to the 2017 reorganization of Local 217B. (Compare Joint Exhibit 1 with Joint Exhibit 6). Respondents alteration of the scope of the Local 217 bargaining unit, with the implicit consent of the Employer, fails to show that it engaged in any conduct violative of Section 8(b)(1)(A) and UGSOA could lawfully disclaim representation of the IRS, SSA, and VA PSOs.

IV. CONCLUSION

For the reasons set forth above, the Respondents respectfully request that the Administrative Law Judge dismiss all allegations of the Complaint.

Respectfully submitted,

On behalf of the United Government
Security Officers of America International
and its Local 217,

By its attorneys,

/s/Alan J. McDonald

Alan J. McDonald

Kristen A. Barnes

McDonald Lamond Canzoneri

352 Turnpike Road, Suite 210

Southborough, MA 01772-1756

508-485-6600

amcdonald@masslaborlawyers.com

kbarnes@masslaborlawyers.com

Date: January 7, 2019

CERTIFICATE OF SERVICE

I, Kristen A. Barnes, hereby certify that I have on this day served by PDF email a copy of the foregoing Post-Hearing Brief On Behalf Of The United Government Security Officers of America And Its Local 217 upon Christy E. Bergstresser, Esq., [Christy.Bergstresser@nlrb.gov] Field Attorney, NLRB Region 4, 615 Chestnut Street, Philadelphia, PA, 19106, and Charging Party Albert Frazier [reemstyle32@gmail.com].

Dated: January 7, 2019

/s/Kristen A. Barnes

Kristen A. Barnes